

FILED
COURT OF APPEALS
DIVISION II

11 SEP 15 PM 3:57

STATE OF WASHINGTON

BY C DEPUTY

COURT OF APPEALS

DIVISION II

OF THE STATE OF WASHINGTON

PATRICE CLINTON, et al, Appellants

vs.

MARGUERITE NICKLESS, et al, Respondents

No. 41536-4

REPLY BRIEF OF APPELLANT

PATRICE CLINTON
Appellant
9316 Glencove Road
Gig Harbor, WA 98329

A. TABLE OF CASES

Cobb v. Aurora Loan Services, 408 BR 351 (2009)	5
In re Moore, 110 BR 924, 926 (1990)	5
In re Tvorik, 83 BR 450 (1988)	5
Royal Indem Co v. American Bond & Mortgage Co, 289 US 165, 171, 53 Sct 551, 77 LEd 1100 (1964)	5
Stumpf v. Albracht, 982 F2d 275 (1992)	5
United States v. Whiting Pools Inc, 462 US 198, 205, 103 Sct 2309, 2313, 76 LEd 2d 515 (1983)	5
11 USC 110	5
11 USC 541(a)(1)	4,5
CR 19	3
CR 24	3

B. APPELLANT'S REPLY TO RESPONDENT'S BRIEF

Appellant replies to the Respondent's Brief and argument as follows:

ISSUE No. 1: DISMISAL WITH PREJUDICE

Respondent fails to respond to this issue. There has been no objection nor counter argument offered. Appellant should prevail on this issue.

The Trial Court erred when it dismissed with prejudice.

ISSUE No 2: LACK OF STANDING

"Deutch Bank National Trust" became a Defendant in this matter when it was served with a Sumons (copy attached). A Notice of Appearance was filed for "Deutch Bank National Trust" (no "s" in Deutch) (cp 269).

"Deutch Bank National Trust Company" (no "s" in Deutch) filed the only Answer in this matter (cp 208).

The motion for summary judgment was filed by "Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc, Asset-Backed Pass Through Certificates, Series 2005-R11 (Defendant DB)" (with an "s" in Deutsche) (cp 13). This entity had never appeared in this case nor moved to be joined.

The Order Granting Summary Judgment referred to this same entity as "Defendant", despite the fact that it had never been established as a Defendant. (cp 181).

The Respondent argues that "Deutsche (with an "s") Bank National Trust" and "Deutsche (with an "s") Bank National Trust

Company as Trustee in trust for the benefit of certificateholders for Ameriquest Mortgage Securities Trust 2005-R11, Asset-Backed Pass-Through Certificates, series R-11" were named in the complaint and that these entities responded to Clinton's Complaint. (Respondent's Brief p.14). This is false.

The Complaint identifies only "Deutch (without an "s") Bank National Trust", and also, by mistake, "Deutch (without an "s") Bank National Trust Company" as Defendants. Neither of the two entities identified by Respondent were named in the Complaint.

More important is the fact that only "Deutch Bank National Trust" (without an "s") is identified in the Sumons, which is the instrument which brings the party before the Court.

A computer google check reveals literally hundreds of Deutch Bank variations for hundreds of different entities. It is most important that the correct one is identified as the proper defendant.

Respondent states a false assumption that Appellant made "a mistake identifying the proper party. The Respondent apparently believes that he can unilaterally, without hearing, decide that a "mistake" has been made, and that he has the freedom to ignore the Court Rules (CR 19 and 24) which requires motion, notice, hearing, argument, and a Court Order before the party is joined.

The Appellant made NO mistake. Based upon documents available to her, Appellant specfically and intentionally identified "Deutch (without an "s") Bank National Trust" (without the word "company") as the intended Defendant who might have had an interest in the property. Any other entity would be required to request joinder, as per the Court Rules.

Throughout these proceedings, Respondent has identified itself

by a multitude of different names, to include: (1) "Deutch Bank", (2) "Deutsch Bank", (3) "Deutch Bank National Trust", (4) "Deutsch Bank National Trust", (5) "Deutsche Bank National Trust", (5) "Deutch Bank National Trust Company", (6) Deutsche Bank National Trust Company", (7) "Deutsche Bank National Trust Company, as Trustee in trust for the benefit of the certificateholders for Ameriquest Mortgage Securities Trust 2005-R11, Asset-Backed Pass-Through Certificates, Series 2005, R-11", (8) "Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc, Asset-Backed Pass-Through Certificates, Series 2005-R11", (9) "Defendant DB", and (10) a number of others.

In order to hold a security interest in a specific property, an entity must be able to produce and prove that interest by providing documentation which positively identifies that specific entity and property. Deutsche Bank (or whoever this want-to-be Defendant actually is) has never provided any documentation or proof to back any claim of interest.

"Deutch Bank National Trust" is the only properly established Defendant. The summary judgment was granted to a non-party who did NOT have the right to make any motion. The Court had no jurisdiction to enter the Order Granting Summary Judgment. The Court erred.

ISSUE No 3: JURISDICTION

Respondent alleges that it is able to ignore the requirement to serve the Bankruptcy Trustee with notice of hearing because action had not yet been taken to join the Bankruptcy Trustee as a party. (Respondent's Brief p. 16-17). This is false.

"Commencement of a bankruptcy case creates an estate comprised of 'all legal or equitable interests' of the debtor". (11 USC section 541(a)(1)). "The scope of section 541 is broad and includes intangible

property such as a cause of action. (In re Moore, 110 BR 924, 926 (1990)), citing United States v. Whiting Pools Inc, 462 US 198, 205, 103 Sct 2309, 2313, and 76 LEd 2d 515 (1983)).

"Debtor lacks standing to assert the cause of action. The trustee holds the cause of action pursuant to 11 USC 541(a)." (In re Tvorik, 83 BR 450 (1988)).

"It is well settled that a trustee in bankruptcy stands in the shoes of the debtor, and succeeds to all the assets of the bankruptcy estate". (Stumpf v. Albracht, 982 F2d 275 (1992)).

"The petition in bankruptcy is not a transfer but a pleading, and the trustee is vested with the bankrupt's title not by act of the parties but by 'operation of law'" (11 USC 110; Royal Indem Co v. American Bond & Mortgage Co, 289 US 165, 171, 53 Sct 551, 77 LEd 1100 (1964)).

The Bankruptcy Trustee in the "real party in interest" with respect to these claims. An action must be prosecuted in the name of the real party in interest. In order to circumvent this proscription, a debtor must either show that his or her claims are exempt from the bankruptcy estate or were abandoned by the bankruptcy trustee. (Cobb v. Aurora Loan Services, 408 BR 351 (2009)).

You cannot assume that the bankruptcy trustee has "abandoned" property from the bankruptcy estate. The law requires notice to all creditors, hearing, and a court order which specifically identifies the property to be abandoned.

In this matter, the bankruptcy trustee had NOT abandoned the cause of action which was part of the bankruptcy estate. Any action taken by in this cause of action without proper abandonment or active prosecution by the bankruptcy trustee would be improper and subject to sanctions for contempt.

It is error to allow motion, hearing, and entering an order without first obtaining an order which abandons the cause of action, or without notice to the trustee, in the case that the trustee decides to actively prosecute the cause of action.

Dated this 15th day of September 2011.

Respectfully submitted



Patrice Clinton


CERTIFICATE OF SERVICE

The undersigned certifies that on September 16th, 2011, she did mail one copy of the above to Frederick Rivera, 1201 3rd Ave, Suite 4800, Seattle, WA 98101.

Dated this 15th day of September 2011.



Patrice Clinton

FILED
COURT OF APPEALS
DIVISION II
11 SEP 15 PM 3:57
STATE OF WASHINGTON
BY 
DEPUTY